

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Jackson Analyst: Gloria McConnell Bill Number: AB 203
Related Bills: See Legislative History Telephone: 845-4336 Amended Date: March 26, 2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Consumer's Financial Privacy Act

SUMMARY

Under this bill a financial institution may not disclose, with certain exceptions, any personal information of a consumer without prior consent of that consumer.

This bill would primarily affect two programs administered by FTB: the personal income tax (PITL) and child support collection programs. In addition, FTB's other nontax debt collection programs (see "Program Background") would be affected because FTB relies heavily on PITL information to collect these debts. However, this analysis focuses on the primary impact. The impact on each program is generally separately analyzed.

PURPOSE OF THE BILL

The purpose of this bill, according to the author's office, is to keep consumers' financial information private and protected.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on or after January 1, 2002.

OTHER STATES' INFORMATION

According to the author's office, the National Conference of State Legislatures indicates *Alaska*, *North Dakota* and *Vermont* have laws similar to the provisions in this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill could adversely affect the department's ability to collect income taxes, as well as the nontax debt collection programs (see Program Background) for which it is responsible. The potential impact in any given year is unknown, but may be significant.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Alan Hunter for GHG

05/03/01

POSITION

Pending.

Summary of Suggested Amendments

Suggested amendments are attached to:

- exempt the Franchise Tax Board (FTB) from the provisions of this bill for child support enforcement purposes and to the extent current law permits or requires disclosure to the FTB; and
- make a technical correction relating to the Legislature's findings and declarations.

ANALYSIS

Personal Income Tax Law Administration

FEDERAL/STATE LAW

Current state and federal income tax law requires financial institutions to file information returns reporting to the FTB and Internal Revenue Service (IRS), respectively, interest income paid to customers. Information returns must also be filed to report dividends paid to stockholders and other types of amounts paid to other persons resulting from financial transactions for which the financial institution has control.

Current state and federal income tax law allows FTB and the IRS to generally request or otherwise subpoena information from third parties, including financial institutions, for the purposes of administering its duties under the PITL and other laws. Additionally, state law allows FTB to send orders to financial institutions to withhold taxes from their customer's accounts, and to withhold access to safety deposit boxes. These orders are for the collection of past due taxes. By honoring these orders, the financial institution is disclosing certain customer information.

FTB has the authority to seize and sell assets of a taxpayer to collect back taxes. For seizure and sale processes, FTB must determine any security interest that a financial institution may have in an asset. For FTB to make this determination, the financial institution must disclose certain customer information. To determine the correct tax liability of a taxpayer, FTB may need to audit the records of a taxpayer. The records may be in the possession of a financial institution or a third party to whom the financial institution has sent the records. Currently, financial institutions and other third parties are not required to receive consent from their customers before disclosing this information to FTB.

FTB is generally prohibited from disclosing any confidential tax information it receives, unless it is being used for tax adjudication.

The California Right to Financial Privacy Act limits government from requesting and receiving customer information from financial institutions. However, the Act expressly does not prevent FTB and financial institutions from the following:

- FTB may request and financial institutions may respond to inquiries about a person's bank account and identifying numbers.
- Financial institutions may disclose the amount of its security interest in a specified asset of a customer.
- Financial institutions may disclose financial records in connection with the filing or auditing of tax or information returns required to be filed by the financial institution.

THIS BILL

Under this bill:

1. Financial institutions and third parties could not disclose financial-type records and other personal information without the prior written consent of the consumer (customer).
2. Customers may refuse to have the personal information disclosed.
3. Third parties receiving personal information from a financial institution could not disclose that information without consent of the customer.

Exceptions to the requirement for prior written consent to disclosure would apply under certain circumstances. For example, disclosure to law enforcement agencies is permissible without consent to the extent the disclosure is specifically permitted or required under state or federal law.

IMPLEMENTATION CONSIDERATIONS

This bill broadly defines "consumer" and "personal information," and does not define "nonaffiliated third party." As such, this bill would apply to information of depositors, stockholders, and other persons for which information returns must be filed under current state and federal law by financial institutions and other third parties.

This bill applies to other types of information that FTB is currently entitled to receive from financial institutions and third parties. This bill conflicts with the Right to Financial Privacy Act that allows FTB to request and receive information from financial institutions.

Additionally, this bill conflicts with other state laws that allow FTB to request and receive any information necessary to administer the laws for which it is responsible. To implement this bill, the department's programs and operations may have to undergo major change and redesign.

Under the provisions of this bill, a taxpayer could refuse disclosure consent and effectively delay or potentially restrain FTB's collection of tax activities.

According to the author's office, this bill is not intended to preclude FTB from fulfilling its tax administration responsibilities. Therefore, the bill should be revised so that disclosure of financial and other personal information to FTB would be permissible, similar to the exemption provided for disclosure to law enforcement, but with respect to the provisions of the entire bill. A suggested amendment is attached for the author's convenience (subdivision (a) of Amendment 2).

TECHNICAL CONSIDERATION

The bill implies that an individual has a constitutional right to privacy protections from business interests. By limiting the constitutional right statement to “business interests,” the statement may be misleading. The attached Amendment 1 would strike out “by business interests.”

PROGRAM BACKGROUND

By law, FTB collects the following nontax debts for other governmental agencies: vehicle license fees, court-ordered debts, certain labor related debts, and past due child support. These debts are generally collected as though they are PITL taxes, using PITL information.

FISCAL IMPACT

The impact on departmental costs is unknown. The costs would depend upon the extent of the changes to FTB’s programs and operations.

Child Support Collections

FEDERAL/STATE LAW

As required by federal law, California law requires FTB to operate the financial institutions data match system (FIDM). For California purposes, FTB administers FIDM in conjunction with its child support collection program on behalf of the Department of Child Support Services (DCSS). The local child support agency is required to compile the names of child support obligors and provide FTB with that information. FTB is required to send the list of obligors to the financial institution (typically a bank), and the bank then compares the list against their records and notifies FTB of any match with either a demand account or savings account. FTB also provides an alternative method for matching records. The alternative method is to be used by financial institutions without the technical ability to process the data exchange or ability to employ a third party data processor to process the data exchange. In essence, the FTB conducts the data match.

FTB has the authority to issue an order to a financial institution to seize the amount in the obligor’s account, not to exceed the amount of the past due support.

In conjunction with the federal requirement for states’ FIDM, the federal government established a multi-state FIDM for financial institutions operating in multiple states (MSFIDM).

Current state law authorizes FTB, on behalf of DCSS, to collect past due child support as though it was a personal income tax debt. For this purpose, FTB may use the PITL information sources and collection remedies, as previously described. Financial institutions and other third parties are not required to receive consent from their customers before disclosing this information to FTB.

THIS BILL

This bill would allow financial institutions and third parties to continue to disclose personal information for child support enforcement purposes without the prior written consent of the customer. However, disclosures without the prior written consent of the customer for child support purposes by third parties receiving personal information from a financial institution appears to be prohibited.

IMPLEMENTATION CONSIDERATIONS

Because FTB's child support collection program uses FTB's tax information, the impact on the PITL program previously discussed under "Implementation Considerations" would reduce the effectiveness of FTB's child support collection program. DCSS administers California's child support enforcement program. To ensure that the program would continue unchanged, disclosure in connection with the child support enforcement programs should be exempted from the limitations of the bill in its entirety. The attached Amendments 1 and 2 would resolve the consideration discussed in this paragraph.

A question arises when financial institutions use the alternative option to comply with FIDM. Under the alternative option, financial institutions send to FTB their records of all accountholders, regardless of whether they may owe child support. FTB then compares the financial institution's accountholder list with the list of child support obligors. Because this process includes the disclosure of account information of individuals with no child support obligations, the disclosure of their records may be viewed as being for other than child support enforcement purposes.

Therefore, the language in the bill could be interpreted to require financial institutions to obtain prior written consent from **each** of their customers before satisfying FIDM. Obtaining consent from all account holders could adversely impact banks that are currently using the alternative option to comply with FIDM.

PROGRAM BACKGROUND

The FIDM process enhances the governments' ability to seize funds in possession of financial institutions and belonging to the obligor of past due child support. This electronic process basically requires financial institutions to compare their accountholders to the list of past due child support obligors. If there is a match, FTB is notified, and FTB in turn orders the financial institution to seize the amount of the past due child support from the obligor's bank account.

OTHER STATES' INFORMATION

Federal law requires all states to have a FIDM. Staff believes the majority of the states follow federal MSFIDM guidelines.

FISCAL IMPACT

This bill would not significantly affect departmental costs.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 203
As Amended March 26, 2001

AMENDMENT 1

On page 7, strike out lines 6 through 8, inclusive, and insert:

(7) The disclosure is made to a consumer reporting agency in

AMENDMENT 2

On page 9, after line 8, insert:

1798.79.4 The Consumers' Financial Privacy Act does not apply to any personal information, as defined in paragraph (6) of subdivision (a) of Section 1798.79.1, in the following circumstances:

(a) requested by or provided to the Franchise Tax Board to the extent otherwise specifically permitted or required by law.

(b) requested by or provided to a local, state, or federal agency for child support enforcement purposes.